

1 MCGREGOR W. SCOTT
United States Attorney
2 CAMERON L. DESMOND
DAVID W. SPENCER
3 Assistant United States Attorney
501 I Street, Suite 10-100
4 Sacramento, CA 95814
Telephone: (916) 554-2700
5 Facsimile: (916) 554-2900

6 Attorneys for Plaintiff
7 United States of America

8
9 IN THE UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,
12
13 Plaintiff,
14 v.
15 FRANK JONATHAN GUZMAN, and
JOSE CRUZ IVAN AISPURO,
16 Defendants.

CASE NO. 2:19-CR-232-JAM

STIPULATION REGARDING EXCLUDABLE
TIME PERIODS UNDER SPEEDY TRIAL ACT;
FINDINGS AND ORDER

DATE: August 18, 2020

TIME: 9:15 a.m.

COURT: Hon. John A. Mendez

17
18 This case is set for a status conference on June 16, 2020. By this stipulation, the parties request a
19 continuance of the status conference to October 20, 2020 and to exclude time under Local Code T4.

20 On May 13, 2020, this Court issued General Order 618, which suspends all jury trials in the
21 Eastern District of California “until further notice.” Further, pursuant to General Order 611, this Court’s
22 declaration of judicial emergency under 18 U.S.C. § 3174, and the Ninth Circuit Judicial Council’s
23 Order of April 16, 2020 continuing this Court’s judicial emergency, this Court has allowed district
24 judges to continue all criminal matters to a date after May 2, 2021.¹ This and previous General Orders,
25 as well as the declarations of judicial emergency, were entered to address public health concerns related
26 to COVID-19.

27
28 ¹ A judge “may order case-by-case exceptions” at the discretion of that judge “or upon the
request of counsel, after consultation with counsel and the Clerk of the Court to the extent such an order
will impact court staff and operations.” General Order 618, ¶ 7 (E.D. Cal. May 13, 2020).

Although the General Orders and declarations of emergency address the district-wide health concern, the Supreme Court has emphasized that the Speedy Trial Act’s end-of-justice provision “counteract[s] substantive openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case. *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally or in writing”).

Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory and inexcusable—General Orders 611, 612, 617, and 618 and the subsequent declaration of judicial emergency require specific supplementation. Ends-of-justice continuances are excludable only if “the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial.” *Id.*

The General Orders and declaration of judicial emergency exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics, natural disasters, or other emergencies, this Court has discretion to order a continuance in such circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

1 In light of the societal context created by the foregoing, this Court should consider the following
2 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-
3 justice exception, § 3161(h)(7) (Local Code T4).²

4 **STIPULATION**

5 Plaintiff United States of America, by and through its counsel of record, and defendant, by and
6 through defendant's counsel of record, hereby stipulate as follows:

7 1. By previous order, this matter was set for status on August 18, 2020.

8 2. By this stipulation, defendant now moves to continue the status conference until October
9 20, 2020 at 9:30 a.m., and to exclude time between August 18, 2020, and October 20, 2020, under 18
10 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4].

11 3. The parties agree and stipulate, and request that the Court find the following:

12 a) The government has represented that the discovery associated with this case
13 includes approximately 928 pages of investigative reports, photographs, and other documents, as
14 well as multiple video and audio recordings. All of this discovery has been either produced
15 directly to counsel and/or made available for inspection and copying.

16 b) The Indictment in this case was returned on December 19, 2020. ECF No. 16.

17 c) Counsel for Defendant Guzman, Kelly Babineau, substituted into this case as
18 counsel of record on February 4, 2020. *See* ECF Nos. 20-22.

19 d) On August 7, 2020, the government produced approximately 36 pages of
20 additional discovery, consisting of investigative reports, to counsel for defendants.

21 e) Counsel for defendants desire additional time to review the discovery, to conduct
22 necessary investigation, and to consult with their clients.

23 f) Counsel for defendants believe that failure to grant the above-requested
24 continuance would deny them the reasonable time necessary for effective preparation, taking into
25 account the exercise of due diligence.

26 g) The government does not object to the continuance.

27
28 ² The parties note that General Order 612 acknowledges that a district judge may make
"additional findings to support the exclusion" at the judge's discretion. General Order 612, ¶ 5 (E.D.
Cal. March 18, 2020).

h) In addition, because of the public health concerns cited by the General Orders and declarations of judicial emergency, and presented by the evolving COVID-19 pandemic, an ends-of-justice delay is particularly apt in this case.

i) Based on the above-stated findings, the ends of justice served by continuing the case as requested outweigh the interest of the public and the defendant in a trial within the original date prescribed by the Speedy Trial Act.

j) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161, et seq., within which trial must commence, the time period of August 18, 2020 to October 20, 2020, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4] because it results from a continuance granted by the Court at defendants' request on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

4. Nothing in this stipulation and order shall preclude a finding that other provisions of the Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial must commence.

IT IS SO STIPULATED.

Dated: August 13, 2020

McGREGOR W. SCOTT
United States Attorney

/s/ DAVID W. SPENCER
DAVID W. SPENCER
Assistant United States Attorney

Dated: August 13, 2020

/s/ Kelly Babineau
Kelly Babineau
Counsel for Defendant
FRANK JONATHAN
GUZMAN

Dated: August 13, 2020

/s/ David W. Dratman
David W. Dratman
Counsel for Defendant
JOSE CRUZ IVAN AISPURO

FINDINGS AND ORDER

IT IS SO FOUND AND ORDERED this 14th day of August, 2020.

/s/ John A. Mendez

THE HONORABLE JOHN A. MENDEZ
UNITED STATES DISTRICT COURT JUDGE